

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 18075 OF 2000

Date: 08.12.2006

Between:

M. Janardhan and another.

... Petitioner

and

State of A.P. rep., by Prl.Secretary, Department of School
Education, Hyderabad.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 18075 OF 2000

ORDER:

The 1st petitioner is a graduate in science from S.V. University possessing a bachelor's degree in education. The 2nd petitioner also possesses a bachelor's degree in Arts and Physical Education from Aurangabad University. They were both employed as teachers in the 3rd respondent school from July 1992. Petitioners would contend that the 3rd respondent was repeatedly dispensing with their services during summer vacation resulting in their filing W.P. No. 12103 of 1998 wherein this Court passed an interim order directing the 3rd respondent to continue the petitioners in service without artificial breaks. Petitioners would submit that when they approached this Court earlier they were drawing a monthly salary of Rs.2,680/- with annual increments ranging between Rs.250/- and Rs.300/- and that provident fund was also being deducted from their salaries. Petitioners would contend that, after they approached this Court, the 3rd respondent not only stopped payment of increments but also reduced their basic pay. The 3rd respondent issued charge memo dated 27.08.1999 and 17.08.1999 respectively against the petitioners herein. In their explanation dated 27.08.1999 the petitioners informed the 3rd respondent that the A.P.C.S (C.C&A) Rules had no application to teachers working in schools belonging to private management. Thereafter the 3rd respondent issued a fresh charge memo, in proceedings dated 28.09.1999, containing three charges to which the petitioners submitted their explanation. Petitioners would contend that copies of the documents, sought to be relied upon in support of the charges, were not furnished to them resulting in their being denied reasonable opportunity of submitting

their explanation. Petitioners would also contend that, since one of the charges levelled against them was that the President and Correspondent of the 3rd respondent college was humiliated and insulted by the petitioners and as a person cannot be a judge on his own cause, he was not entitled to issue a charge memo or initiate disciplinary action against the petitioner or to impose any punishment against them. Petitioners would contend that, despite their emphatic objections, the enquiry was proceeded with and thereafter, vide proceedings dated 01.01.2000, a show cause notice was issued proposing to remove them from service. The petitioner submitted a detailed representation thereto on 17.01.2000 and thereafter the impugned proceedings dated 11.09.2000 and 13.09.2000 respectively were passed directing that the petitioners herein be removed from service. Petitioners would submit that, though the 2nd respondent is the appellate authority, no useful purpose would be served in invoking the jurisdiction of the 2nd respondent and that, in any event, the petitioner cannot be precluded from invoking the jurisdiction of this Court under Article 226 of the Constitution of India, on the mere ground of existence of an alternative remedy. The petitioners would rely on **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai**^[1], **Mir Sabir Ali Vs. Commissioner of Police, Hyderabad**^[2] and **Anita Aidinyantz Vs. Dr. Ken. R. Gnanakan**^[3] in this regard.

Sri Pratap Narayan Sanghi, learned Counsel for the petitioner, would seek to challenge the order of removal on several grounds but since the order of punishment is required to be set aside on the short ground of violation of Section 79 of the A.P.

Education Act, it is wholly unnecessary for this Court to examine any of the other contentions. Section 79 of the A.P. Education Act reads thus:

79. Dismissal, removal or reduction in rank or suspension, etc., of employees of private institutions:-

(1) No teacher or member of the non-teaching staff employed in any private institution (hereinafter in this Chapter referred to as 'the employee') shall be dismissed, removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

(Provided that no order of dismissal, removal or reduction in rank shall be passed under this sub-section against an employee other than an employee of a minority educational institution without the prior approval of such authority or Officer as may be prescribed for different classes of private institutions;

Provided further that the management may prefer an appeal against any order of the Officer or authority refusing approval under this sub-section to such authority or officer and within such period as may be prescribed.)

(2) An inquiry under sub-section (1) shall be completed within a period of two months from the date of communication of charges against the employee.

(3) (a) No employee shall be placed under suspension except when an enquiry into the gross misconduct of such employee is contemplated.

(b) No such suspension shall remain in force for more than a period of two months from the date of suspension and if such inquiry is not started and completed within that period, such employee shall, without prejudice to the inquiry, be deemed to have been restored as employee:

Provided that the competent authority may, for reasons to be recorded in writing, extend the said period of two months for a further period not exceeding two months, if in the opinion of such competent authority the inquiry could not be completed within the said period of two months for reasons directly attributable to such employee.

(4) Every such employee as is placed under suspension under sub-section (3) shall be paid subsistence allowance at such rates as may be prescribed during the period of his suspension.

(5) Before imposing any penalty, other than the penalties specified in sub-section (1), an employee shall be informed in writing of the allegations on which action is proposed to be taken and be given an opportunity of making a representation, but it shall not be necessary to hold an oral inquiry into such allegations.

The first proviso to Section 79 requires prior approval of the competent authority to be taken before an order of removal from service is passed under the said Section. It is the specific case

of the petitioners, in ground No.3 of the affidavit filed in support of the writ petition, that in the case on hand no prior approval was obtained or sanctioned by the competent authority.

Sri Pratap Narayan Sanghi, learned Counsel for the petitioner would place reliance on two Division Bench judgments of this Court in **Vasavi College of Engineering, Hyderabad Vs. A. Suryanarayana**^[4] and **Tagore Home Junior College, Secunderabad Vs. P.P.A. Christian**^[5]

In the counter-affidavit, filed on behalf of the 3rd respondent, it is stated that they had, in fact, sent a copy of the enquiry report and the explanation submitted by the petitioners for approval of the competent authority but the same was returned with the endorsement that as their appointment had not been approved by the department the question of giving permission under Section 79 of the Education Act did not arise.

In **Vasavi College of Engineering, Hyderabad**⁴, the Division Bench of this Court observed thus:

“.....All these provisions apply to private institutions as well. In other words, the scheme of the Act is such that it provides for regulation of the conduct of private institutions as also creates obligations on them. Though private in name, the institutions have rights and duties conferred by the statutes; and their functioning is regulated by the statutory provisions. Even a non-aided institution is governed by such regulatory provisions. We are of the opinion that institutions of this nature are liable to be compelled to discharge their statutory obligations just as much as they are entitled to seek the assistance of court for enforcement of the rights conferred under the statute.

Chapter XIV of the Act deals with “payment of salaries and allowances to and disciplinary action against employees of private institutions”. Chapter XV deals with their welfare and code of conduct and rules of conduct of the employees of educational institutions”. Dismissal, removal or reduction in rank or suspension etc, of employees of private institutions are governed by Section 79. A further appeal is provided to Government under Section 81 subject to special provision regarding appeal in certain past disciplinary cases as provided under Section 82. Power is granted to prescribe manner

of payment of pay and allowances of employees of private institutions in Section 84 of the Act. In so far as the Act contains provisions relating to service conditions of teachers and other employees of the educational institutions, we have to give meaning to such provisions as intended to ameliorate the conditions of service of such employees. We have therefore, to understand such provisions in the same manner as the ameliorative/welfare statutes are interpreted. On a scrutiny of these provisions we are of the opinion that the teachers and other employees are entitled to seek enforcement of their statutory rights against the management by approach of this court under Article 226 of the Constitution of India.

We have therefore no hesitation to hold that the private institutions who have statutory duties to perform and whose orders are subject to scrutiny by public authorities by reason of statutory provisions are subject to jurisdiction and that this court is competent to entertain a complaint of violation of statutory obligations on the part of the managements of private institutions, and that it is competent for the High Court to enforce such obligations by mandamus or quash the offending orders by Certiorari.

We see considerable force in the submission that penal termination of service (dismissal or removal) and reduction in rank as also suspension are covered by Section 79 of the Act which requires that no teacher or member of the non-teaching staff employed in any private institution, shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

We hold that if the service of a teacher or other employee of a private educational institution is sought to be terminated by dismissal or removal, it shall be preceded by any inquiry as provided in Section 79 and such removal shall be effected only with the prior approval of the competent authority. Like-wise, in the case of any termination of service other than those covered by Section 79 of the Act, prior approval of such competent authority or the next higher authority is made a condition precedent for any other termination of service under Section 83 of the Act.

We note that the statute makes no difference between a temporary employee and a regular employee. Section 79 of the Act dealing with dismissal, removal or reduction in rank undoubtedly applies to temporary employees as well, except in a case where a person was appointed for a specified term, on the expiry of which, or subject to specific condition, in compliance with which, his services are sought to be terminated.

In the view which we have taken that Sections 79 and 83 supplement each other, and between them exhaust all terminations of service-penal or otherwise and that those provisions apply equally to regular as also temporary, non-regular employees, it is not necessary for us to consider the other aspects of this question. We hold this view in view of the fact that in either case where the termination penal or non-penal, it is obligatory to obtain prior approval of competent or higher authority, as a condition precedent for any such action which the employer may take against the teaching or non-teaching employees of institutions covered by the Act. That seems to be the proper

understanding of the salutary provisions which are ameliorative in character. If we are to understand Sections 79 and 83 to apply only to some categories and not to cover the entire gamut of terminations of services of employees of educational institutions, that will leave a grey area where the whims and fancies of the management will rule the roost. Such an interpretation frustrates the very purpose of the enactment.....” (emphasis supplied)

In Tagore Home Junior College Secunderabad⁵, the

Division bench of this Court observed thus:

“.....The proviso appended to sub-section (1) of Section 79 of the Act has been enacted for a purpose of allowing the competent authority to consider the materials on record independent of the opinion formed by the enquiry officer and/or by the disciplinary authority so as to enable him to come to a conclusion that the matter is such where a major penalty is required to be imposed. The competent authority before grant of such approval would, therefore, be required to apply its own mind and satisfy itself, *prima facie*, that rules of fair play and natural justice have been complied with. The requirement to take prior approval before a punishment can be imposed cannot be said to be an empty formality, which can be dispensed with only in a case where the proviso is attracted. With regard to the importance of complying with the principles of natural justice, reference may be made to a decision of the Calcutta High Court in *Sri Hamanuman Steel Rolling Mills Vs. CESE Ltd.*, AIR 1996 Cal. 449, wherein one among us (S.B. Sinha, J.) observed:

“In my opinion, the principles of natural justice are required to be complied with, be it pre-decisional hearing or a post decisional one depending on the facts and circumstances of each case”.

In fact, the contextual interpretation of the Act and the Rules would clearly suggest that the same had been made for protecting the services of the employees and not for the purpose of granting an arbitrary power upon the authorities and any particular Officer thereof to likely twist a case of this nature, keeping in view the fact that right to continue in service is protected under Article 21 of the Constitution of India. It was, therefore, obligatory on the part of the management to strictly comply with the statutory requirements. There cannot be any doubt, whatsoever, that where a delinquency of the nature of the present case is concerned, the delinquent cannot be treated with sympathy or mercy, as has been held by the Apex Court in *Sugandhar Bishop's case* (supra) and *Apparel Export Promotion Council's case* (supra), but before a ratio decidendi is laid down and the said decisions of the Apex Court can be applied, the procedural safeguards provided for under the statute must be complied with.....” (emphasis supplied)

If indeed, as contended by the 3rd respondent in their Counter-affidavit, the competent authority had rejected their

request for grant of prior approval on the ground that the competent authority had not approved the appointment and had held that in such cases the question of permission under Section 79 did not arise, it would be an order contrary to the law laid down in the aforesaid judgments of the Division bench of this Court.

The impugned order of termination, being in violation of Section 79 of the A.P. Education Act, is quashed. Needless to state that this order shall not preclude the 3rd respondent herein from obtaining prior approval of the competent authority under Section 79 of the A.P. Education Act and take action, against the petitioners, thereafter in accordance with law.

Sri Pratap Narayan Sanghi, learned Counsel for the petitioner, would express his apprehension that an order may be passed by the competent authority granting approval behind the back of the petitioners herein. I find no basis for any such apprehension I have no manner of doubt that the competent authority, in case a request is made by the 3rd respondent seeking his approval, shall take action thereupon, strictly in accordance with law.

The writ petition is allowed. However, in the circumstances, without costs.

Date: 08.12.2006

RAMESH RANGANATHAN, J

MRKR

- [\[1\]](#) AIR 1999 SC 22
- [\[2\]](#) 1999(5) ALD 123
- [\[3\]](#) 1997(1) ALD 44
- [\[4\]](#) 1991(3) ALT 335
- [\[5\]](#) 2001(3) ALD 742 (DB)